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The 12th February, 1986.

No. 9/6/86-6Lab./759.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947,) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of Haryana Roadways, Jind.

**IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER,
LABOUR COURT, AMBALA**

Reference No. 157 of 1984
(Old No. 117 of 1982)

**SHRI TIRATH RAJ, WORKMAN AND THE
MANAGEMENT OF THE HARYANA
ROADWAYS, JIND**

Present:

Shri Tirath Raj in person.
None for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Tirath Raj, Sweeper and Haryana Roadways, Jind, to Labour Court, Rohtak. The terms of the reference are as under :—

"Whether the termination of services of Shri Tirath Raj, Sweeper was justified and in order ? If not, to what relief is he entitled ?"

Labour Court, at Ambala was constituted in April, 1984, so this reference was received by transfer.

Workman Tirath Raj through his demand notice alleged that he joined service of respondent-management on 12th September, 1978 as a Sweeper at monthly pay of Rs. 350. Thereafter, his services were terminated on 27th July, 1979. He was again taken in service on the intervention of the Labour Officer, Panipat and, thereafter, he was again terminated on 15th December, 1981 in violation of section 25(F) of the Industrial Disputes Act, 1947. He has prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management was served it contested the dispute and contended that service of workman were discontinued being no longer

required,—vide order, dated 14th February, 1981 as per terms and conditions of the appointment. Tht management was not bound to issue any notice before passing the termination order of the services of the workman. It was prayed that the reference is fake it is not justified and it be dismissed.

On the pleadings of the parties the following issues were framed for the just decision of this case.

ISSUES :

1. Whether the termination order dated 14th December, 1981 regarding the service of workman is justified if not its effect ? OPM
2. Relief.

I have heard Shri S. S. Gupta authorised representative of workman and Shri A. R. Goyal Law Officer of management and have gone through the oral and documentary evidence placed as the file. My issue-wise finding are as under :

ISSUE NO. 1 :

In the support of this issue management examined Shri Surinder Sharma Clerk who stated that Shri Tirath Raj remained in the service of management for more than 240 days. He used to work on daily wages. His services were terminated because the post of daily wager were abolished by the Government. Case of the workman was sent to the Government but Government did not grant sanction for keeping workman in service.

Shri Tirath Raj appeared as AW-1. He stated that before removing him from the service no notice was served upon him. No pay in lieu of notice period and no retrenchment compensation was paid to him.

In view of the above evidence I am of the opinion that in the case in hand. There is a miscarriage of justice. Workman Tirath Raj had completed his service more than 240 days, so before removing him from service a notice should have been given to him in default of the same pay of the notice period and retrenchment compensation should have also been paid to him. But the management committed an error in issuing a notice and making payment of wages for the notice period and retrenchment compensation, so there is a clear violation of provision of section 25(F) of the Industrial Disputes Act, 1947. Accordingly

the order of management regarding the termination of services of Shri Tirath Raj is declared unjustified and incorrect. Accordingly it is set aside. So this issue is decided, in favour of workman against the management.

ISSUE NO. 2 : RELIEF :

For the fore-going reasons on the basis of my findings on issue No. 1 I held termination order illegal.

I pass my award regarding the dispute in question accordingly.

The 27th December, 1985.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3303, dated the 31st December, 1985

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

11/18th February, 1986

No. 9/9/86-6Lab./680.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Elcon India, Plot No. 41, Sector 6, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 14/1983.

between

SHRI KISHORI PARSHAD SINHA AND THE MANAGEMENT OF M/S ELCON INDIA PLOT NO. 41, SECTOR-6, FARIDABAD.

Present:—

Shri Jawahar Lal, for the workman.

Shri Jagbir Singh Badhana, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Kishori Parshad Sinha and the Management of M/s Elcon India, Plot No. 41, Sector-6, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Kishori Parshad Sinha was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 1st February, 1983 alleged that he was employed by the respondent Management on 1st February, 1981 as helper on permanent basis and was drawing Rs. 360 per month, but he was not allowed to join duty with effect from 30th August, 1982 when he complained to the Labour Inspector, Sector-7, Faridabad. It was further alleged that the services of the claimant were terminated due to his trade union activities and as such he was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 25th March, 1983 pleaded *inter alia* that the claimant was appointed on daily wages at the rate of Rs. 13 per day on 1st December, 1981 and since the casual job was finished in March, 1982, therefore, the claimant collected his full and final dues on 30th March, 1982. It was further pleaded that the claimant again came to the Management and applied on 23rd May, 1982 when he was allowed to join duty on 1st June, 1982 on daily wages and the casual work was over and the claimant collected his full and final dues on 20th August, 1982. It was, therefore, prayed that the request made by the claimant in the claim statement be rejected.

4. The claimant in his rejoinder filed on 27th April, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 17th May, 1984:—

(1) Whether the workman has collected the dues on 30th March, 1982 and again on 20th August, 1982 in full and final settlement of his claim as pleaded? OPM.

(2) Whether the termination of service of Shri Kishori Parshad Sinha was justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that the Management has examined two witnesses and documents Exhibit M-1 to M-11 have been tendered into evidence. The claimant has examined two witnesses and documents Exhibit W-1 to W-4 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. The Management has examined MW-1 Shri Rajesh Kumar, Time Office Clerk, who stated that he had brought the relevant record and that the claimant had joined service on 1st December, 1981 as helper on daily wages at the rate of Rs. 12. He further stated that the claimant remained in service upto 30th March, 1982 because thereafter his services were not required due to paucity of work and his accounts were settled on 30th March, 1982, when he received Rs. 331,—vide voucher Exhibit M-1 which was prepared by the witness and that the said amount was received by the claimant. On 23rd May, 1982 the claimant requested for some job when he was asked to fill in the form Exhibit M-2. He further stated that the said form was filled in by the claimant in his own hand, when he was employed on daily wages from 1st June, 1982. He also stated that the claimant worked in the factory upto 16th August, 1982 and on 20th August, 1982 he came to the factory and received the amount due to him in full and final settlement of his claim,—vide receipt Exhibit M-3, which was signed by him, when he received the sum of Rs. 360. He further stated that daily workers were employed keeping in view the pressure of work and that the claimant was employed for the second time at the rate of Rs. 13 per day. MW-2 Shri Som Nath Aggarwal Hand writing and Finger Print Expert stated that he had examined the disputed signature mark C-1 on the payment voucher dated 30th March, 1982 (Exhibit M-4) and signatures mark Q-2 on the full and final receipt Exhibit M-5 and had compared the same with the comparison signatures of the claimant mark S-1 and S-2 on the appointment letter dated 23rd May, 1982 (Exhibit M-6) in original and had made Photographical enlargement Exhibit M-7 and the negative was Exhibit M-8. He further stated that it was his considered opinion that the disputed signatures mark Q-1 and Q-2 were of the claimant. He further stated that he had examined the disputed writings in Hindi mark Q-3 and Q-4 on the payment voucher Exhibit M-4 dated 30th March, 1984 and had

compared with the comparison writing mark S-3, S-4, and S-5 on the appointment letter dated 23rd May, 1982 (Exhibit M-6) and signatures mark S-6 on the demand notice dated 1st February, 1983 in original as well as photographic enlargement Exhibit M-9 and its negative was Exhibit M-10. He also stated that in his opinion, the disputed writing Q-3 and Q-4 on Exhibit M-4 was also written by the claimant and that the detailed reasons had been given by the expert in his report Exhibit M-11.

8. Shri Kishori Parshad Sinha has appeared as WW-1 and stated that he was employed on 1st December, 1981 in the respondent factory and that no appointment letter was issued to him. He further stated that he used to work as helper on hydraulic press machine which job was of permanent nature. He further stated that he demanded pay slip, leave book etc. from the Management due to which he was turned out on 16th August, 1982 and that he complained to the Labour Inspector copy Exhibit W-1. He further stated that complaint Exhibit W-1 was filed by him regarding the wages for the period 1st August, 1982 to 16th August, 1982. He further stated that he came to the gate of the factory, but no job was given to him. He also stated that he was not in service when the poster Exhibit W-3 was printed. WW-2 Shri Shive Shanker Parshad stated that the claimant used to work as helper on the Hydraulic Press and that no appointment letter, wage slip, leave book etc. were issued by the respondent. He further stated that when these facilities were demanded, the claimant was turned out by the Management. He further stated that he himself worked in the respondent factory upto June, 1985. Exhibit W-4 is the medical certificate dated 20th August, 1982 for the period 16th August, 1982 to 19th August, 1982.

9. A perusal of the above evidence would show that MW-1 Shri Rajesh Kumar has deposed that the claimant served in the respondent factory from 1st December, 1981 to 30th March, 1982 in the first instance as casual worker on daily wages at the rate of Rs. 12 per day and since the job was finished, he took the amount of Rs. 331,—vide voucher copy Exhibit M-1 (original voucher Exhibit M-4) and that said document was signed by him, when he received the amount in the presence of the witness. This witness has further deposed that the claimant again came on 23rd May, 1982, when the form copy Exhibit M-2 (original application Exhibit M-6) was filled in by him and he was taken on duty with effect from 1st June, 1982, but that job was finished on

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16th August, 1982, when the claimant received Rs. 360 in full and final settlement and signed the voucher copy Exhibit M-3 (original Exhibit M-5) when the _____ was received by him. He deposed that for the second time, the claimant was employed at the rate of Rs. 13 per day. This evidence, therefore, shows that the claimant remained in service for the first time from 1st December, 1981 to 30th March, 1982 when he settled the account on 30th March, 1982 and received the sum of Rs. 331,—vide voucher Exhibit M-4 and that the claimant was again employed on 1st June, 1982 when he worked upto 16th August, 1982 on daily wages and received Rs. 360 on 20th August, 1982,—vide receipt Exhibit M-6 because that job was finished. The daily rate in the first instance was Rs. 12, while it was Rs. 13 when the claimant was employed for the second time after a gap of two months. The testimony of this witness is corroborated by MW-2 Shri Som Nath Aggarwal Handwriting and Finger Print Expert, who has proved the documents Exhibit M-7 to M-11. Exhibit M-11 is the report containing the detailed reasons of his opinion, in which it is recited that the disputed vouchers Exhibit M-4 and M-5 were signed by the claimant and the endorsement in Hindi on voucher Exhibit M-4 was in the hand of the claimant. The objection raised by the representative of the claimant was that specimen signatures of the claimant were not obtained and as such this report did not help the Management. The argument does not carry much weight because while in service of the respondent-factory the claimant was affixing his signatures in English, but in the demand notice and thereafter he started signing in Hindi. Consequently, if the specimen signatures in Hindi had been obtained by the expert he could not compare the same with his English signature. He, consequently, compared the disputed signature on these vouchers with the signatures of the claimant affixed on the application Exhibit M-6. Since the claimant had made endorsement in Hindi language on the voucher Exhibit M-4, therefore, this endorsement in Hindi was compared by the Expert with the admitted signatures of the claimant on the demand notice dated 1st February, 1983 mark S-6 and opined that endorsement mark Q-3 and Q-4 on the voucher Exhibit M-4 was in the hand of the claimant. Shri Kishori Parshad Sinha Claimant and Shri Shive Shanker Parshad stated that the claimant was employed on 1st December, 1981 and was turned out on 16th August, 1982. The oral testimony led by the claimant does not help him because there is no documentary evidence to show that the claimant

was appointed on permanent basis or that he worked during the period 1st April, 1982 to 31st May, 1982. The medical certificate Exhibit W-4 does not help the claimant because according to this document he was ill on 16th August, 1982 whereas according to the Management he was on duty on that and worked upto 16th August, 1982. The poster Exhibit W-3 was issued when the claimant was not in service of the respondent company and as such this document does not help the claimant. In the complaint Exhibit W-2 the claimant had mentioned that he was not being allowed to join duty on 20th August, 1982. The Management has proved that he was on-duty upto 16th August, 1982 when the job was finished, and he took his dues on 28th August, 1982. Consequently, the question of giving the job to the claimant on 20th August, 1982 did not arise. In the complaint Exhibit W-1 the claimant demanded the wages for the period 1st August, 1982 to 16th August, 1982. As already mentioned above,—vide receipt Exhibit M-5, he had received Rs. 360 in full and final settlement of his claim. Under all these circumstances the management has succeeded in proving that the claimant collected the dues amounting to Rs. 331 on 30th March, 1982 relating to his first appointment,—vide voucher Exhibit M-4 and also took Rs. 360,—vide voucher Exhibit M-5 on 20th August, 1982 in full and final settlement of his claim relating to second appointment. The issue is decided accordingly in favour of the Management.

Issue No. 2:

10. As discussed in issue No. 1 above, the claimant remained in service for the first time from 1st December, 1981 to 30th March, 1982 while for second time from 1st June, 1982 to 16th August, 1982 and thus it was not continuous service, in as much as there was a gap of two months between two different appointment as the claimant was not in service of the respondent during the months of April and May, 1982. Since the claimant had not completed continuous service of 240 days in a year, therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947, were not attracted to the facts of the present case. As such, the claimant is not entitled to any relief. The award is passed accordingly.

Dated 13th January, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 36, dated 13th January, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 26th February, 1986

No. 9/9/86-6 Lab./1028.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. Oswal Steels, Ltd., Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 169/83

and No. 168/83.

between

SHRI SRI KRISHAN AND SHRI SHANKAR
LAL, WORKMEN AND THE MANAGE-
MENT OF M/S. OSWAL STEELS LTD.,
SECTOR 24, FARIDABAD.

Present:—

Shri Jawahar Lal, for the workmen.
Shri H. R. Dua, for the Management.

AWARD

This award would dispose of two consolidated references bearing reference No. 169 of 1983 (Shri Sri Kishan versus Oswal Steels Ltd., Sector 24, Faridabad) and No. 168 of 1983 (Shri Shaker Lal versus Oswal Steels Ltd., Sector 24, Faridabad. The main proceedings have been held in reference No. 169 of 1983.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sri Kishan and Shri Shaker Lal, Workmen and the Management of M/s. Oswal Steels Ltd., Sector 24, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of
Shri Sri Kishan and Shri Shaker Lal

was justified and in order? If not, to what relief are they entitled to?

3. Notices were issued to both the parties. In the claim statement dated 7th June, 1984, it was alleged that Shri Sri Kishan, claimant was employed with the respondent for the last more than 3 years on permanent basis and was drawing Rs. 15 per day. It was further allowed that the Management refused to give the job to the claimant on 4th January, 1983 when no chargesheet was served on him. It was further alleged that the services of the claimant were terminated illegally due to his trade union activities and as such he was entitled to reinstatement with full back wages.

4. In the written statement dated 7th August, 1984, it was pleaded that there was no relationship of employer and employee between the parties and that the name of the respondent had been wrongly described in the reference. It was further pleaded that the respondent extended the shed and building and other allied fabrications during the years 1980-81 and 1982, which job was completed by the end of June, 1982. It was further pleaded that said job was entrusted to M/s. J. P. Contractors and was temporary casual nature and did not relate to the production work. It was further pleaded that probably the claimant might have been engaged by the said contractor, but the respondent was not aware about it.

5. The claimant in his rejoinder dated 6th September, 1984, reiterated the pleas taken in the claim statement.

6. The facts in reference No. 168/1983 relating to the case of Shri Shaker Lal claimant as mentioned in the claim statement dated 8th May, 1983 are the same, but with this difference that he was alleged to have been employed since 10th November, 1981 as Welder at Rs. 16 per day. Same pleas were taken by the Management in the written statement dated 7th August, 1984 and by the claimant in his rejoinder dated 6th September, 1984.

7. On the pleadings of the parties, the following issues were framed on 6th September, 1984:—

- (1) Whether there is no relationship of employer and employee between the parties as pleaded? OPM.
- (2) Whether the name of the Management has been mentioned wrongly as pleaded? OPM.

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- (3) Whether the termination of service of Shri Siri Kishan and Shri Shanker Lal was justified and in order? If not to what relief are they entitled?
OPM.

8. It may be mentioned that the Management has examined one witness while the claimants have examined 3 witnesses and documents Ex. W-1 to W-33 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE No. 1:

9. The Management has examined MW-1 Shri Veer Singh Rana, Time Keeper, who stated that he had been working in the respondent factory since October, 1978 and that the attendance register was being maintained by the Time Keepers, including the witness. He further stated that he had brought the register and that both the claimants never worked in the respondent factory as per entries in the attendance register. He further stated that the total strength of workers/staff members was about 500 and that E.S.I./Employees Provident Fund Scheme applied to their factory. He also stated that the enquiries made by him revealed that both the claimants used to work with M/s. J. P. Contractors who were given the job of construction which related to the extension of the factory, and a shed was also constructed by them. He also stated that the said contract came to an end in December, 1982, and that the employees of the contractors had left the job since then.

10. Shri Shanker Lal claimant (WW-1) stated that he was employed on 10th November, 1981, by the respondent when no appointment letter was given to him. He further stated that no pay slip, leave book, etc., were given to him and that they were turned out on 4th January, 1983 when he demanded these facilities from the Management. He further stated that no notice pay or compensation was given to him. The attendance cards Ex. W-4 to W-13 have been proved by this witness. He further stated that a complaint was made to the Union because the name of the Company was scored on these cards and that Ex. W-14 was the cutting from the Newspaper, while Ex. M-15 was the copy of the complaint filed by the Union. He also stated that no reply was given by the respondent to the letter Ex. W-16. He also stated that Ex. W-17 was the E.S.I. card, while Ex. W-18 was the notice

issued by the Deputy Labour Commissioner, but the respondent did not appear and that Ex. W-19 was the copy of the letter sent to the Company. WW-2 Sri Kishan, claimant stated that he was employed in 1979 by the respondent as helper, but no appointment letter, pay slip, leave book, etc., were given to him. He further stated that he was turned out on 4th January, 1983, when he demanded these facilities. He further stated that no notice pay, compensation was given to him. The attendance cards Ex. W-21 to W-28 have been proved by this witness. He further stated that the company used to score its name on the attendance cards and then handed over the same to the claimant and that Ex. W-29 was the E.S.I. card. WW-3 Shri Raj Bali stated that he was working in the rolling department of the respondent company and that both the claimants were employed in Fabrications Department which was still functioning. He further stated that the claimants were elected leaders of the Union when they demanded facilities due to which they were turned out. Ex. W-30 was the photostat copy of the E.S.I. Card while Ex. W-31 to W-33 are the copies of the attendance cards.

11. A perusal of the above evidence would show that MW-1 Shri Veer Singh Rana has deposed that both the claimants were not the employees of the respondent company and their names did not appear in the attendance register maintained by the respondent company. This witness has deposed that the claimants worked with M/s. J. P. Contractors, whose job came to end in December, 1982 and that the respondent Company never employed the claimants. The Management has thus deposed that the claimants were not employed by them as workers. The oral testimony of both the claimants to the effect that they were the employees of the respondent company for the last more than one year does not help them because the witness of the Management has clearly stated that the names of the claimants did not appear in the attendance register. The copies of the attendance card Ex. W-4 to W-13 and W-20 to W-29 do not help the claimants because the name of the respondent company has not been given on these documents. The case of the claimants is that they had worked for a number of years. If the respondent company was issuing the attendance card without hearing name of the company, they must have complained to the Labour Authorities immediately after their appointment. The complaint Ex. W-12 is dated 31st May, 1983, while the case of the claimants is that they were not allowed to join duty since 4th January, 1983. This complaint was thus made after the demand notice dated 10th January, 1983. Consequently, no complaint was made by

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the claimants prior to 4th January, 1983. Documents Ex. W-4 to W-13 and Ex. W-20 to W-28 and complaint Ex. W-15 thus do not help the claimants because the claimants would have refused to receive the attendance cards right from the beginning if the name of the company was not being given on these documents. The testimony of WW-3 Shri Raj Bali does not help the claimants because in the attendance cards Ex. W-31 to W-33, the name of the respondent Company is being given. Since WW-3 Shri Raj Bali was the employee of the respondent, the attendance cards were being issued to him bearing the name of the respondent company. The E.S.I. Cards Ex. W-17, W-29, W-30 do not bear the name of the company. Moreover, the Contractor is not allotted any separate number of E.S.I. Corporation, but, on the other hand, the E.S.I. deductions are made by the Company from the contractor being principal employer and in that event also the employees of the contractor do not become the employees of the company. In the present case, the alleged contractor has not been impleaded as party and such as no finding can be given against the alleged contractor.

12. In view of the above discussion, it is held that the Management has succeeded in proving that there was no relationship of employer and employee between the parties. The issue is decided accordingly in favour of the Management.

ISSUE No. 2:

13. The name of the respondent is M/s. Oswal Steels, while in the reference it have been described as M/s. Oswal Steels Ltd. This wrong description, however, does not go to the route of the matter because the word "limited" has been shown by the claimants due to inadvertance. The issue is decided accordingly partly in favour of and partly against the Management.

ISSUE No. 3:

14. While discussing issue No. 1, it has been found that there is no relationship of employer and employee between the parties and as such the question of termination of service of the claimants by the respondent Management does not arise and as such the claimants are not entitled to any relief. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 62, dated the 23rd January, 1986.

Forwarded (Four Copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the of the Industrial Disputes Act, 1949.
Dated 23rd January, 1986.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

The 26th February, 1986

No. 9/9/86-6Lab./1317.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/S The Panipat Cooperative Sugar Mills Ltd., Panipat.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 191/1982.

between

SHRI FAQIR SINGH WORKMAN AND THE MANAGEMENT OF M/S THE PANIPAT CO-OPERATIVE SUGAR MILLS LIMITED,
PANIPAT.

Present:—

Shri Nathu Mal Munjal for the workman
Shri R. S. Malik, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Faqir Singh and the Management M/s. The Panipat Co-operative Sugar Mills Limited, Panipat, to this Tribunal for adjudication:—

Whether the termination of service of Shri Faqir Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 13th July, 1982, it was alleged that the claimant was appointed in

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Panipat Sugar Mills Limited, Panipat, on 10th August, 1956 in the security staff. It was further alleged that he was a Military discharged person and that his appointment was made on the basis of discharge certificate issued by the Military Authorities. It was further alleged that in the said certificate, the age of the claimant was given on 14th March, 1947 as 22 years. It was further alleged that he received the notice from the respondent Mills on 30th November, 1981 to the effect that he could not be relieved on 30th May, 1981, the date of superannuation and was wrongly continued in service and as such, his services stood terminated by way of superannuation on 30th November, 1981. It was alleged that the claimant made a representation to the Management on 2nd December, 1981 that as per military record, his date of birth should be taken as 14th March, 1925 and as such he had to retire on 31st March, 1985. It was further alleged that on 29th August, 1980, as per notice displayed on the notice board, the age of retirement was shown as 30th June, 1981 whereas he had to retire on 14th March, 1985, but was allowed to continue in service and that his age was corrected in the record of the Mills on the basis of the discharge certificate given by him. It was further alleged that the management could not change the age of superannuation of the claimant and that his services were terminated illegally without holding any enquiry and as such, he was entitled to reinstatement with full back wages.

3. The management in its written statement dated 17th August, 1982 pleaded that the claimant did not submit any proof of age when he joined service of the respondent Mills and as such he was asked to produce the same, but he failed to do so. It was further pleaded that on 1st June, 1968, he himself appeared before the Medical Officer of the Mills for determination of his age who ascertained his age as 47 years on that date, which was admitted by the claimant as correct and accordingly the entries were made in the record of the Mills. It was further pleaded that the claimant declared the above age as correct in form No. 2 regarding employees family pension scheme. It was pleaded that due to connivance of one Senior Time Keeper of the Mills, the claimant got tempered with his age in the Mills record without any approval from the competent authority and continued in service till the mischief was detected by another Senior Time Keeper who brought to the notice of the General Manager and consequently the claimant was retired on 30th November, 1981. It was

further pleaded that the delinquent official was chargesheeted and the enquiry was still pending against him. It was also pleaded that the Military discharge certificate produced by the claimant was not authentic because that was in the name of Shri Faqir Chand S/o Shri Sohial Chand, whereas the claimant, name in the Mills record was mentioned as Faqir Singh S/o Shri Sohial Singh and that no body could change the name of his father. It was further pleaded that the claimant was retired legally on attaining the age of superannuation i.e. 60 years and as such was not entitled to any relief.

4. The claimant in his rejoinder dated 16th September, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 16th September, 1982:—

Whether the termination of service of Shri Faqir Singh was justified and in order? If not, to what relief is he entitled? OPM.

6. The management has examined one witness and documents, Exhibit M 1 to M 7, have been tendered into evidence. The claimant has examined 3 witnesses and documents Exhibit W 1 to W 7 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE NO. 1.

7. The management has examined MW 1 Shri Hem Raj Sharma, Senior Time Keeper, who stated that the date of retirement of worker was 60 years in the respondent Mills. He further stated that the date of birth of the claimant was mentioned in the record according to certificate issued by the Doctor. He further stated that the letter Exhibit M-2, was given to the claimant to produce the proof regarding his age, but the claimant failed to do so when the letter Exhibit M-3 was written to him. He further stated that the claimant had admitted the contents of the document Exhibit M-4, which contained his photo as well when he had given the form Exhibit M-5, regarding Provident Fund Pension Scheme, which was duly signed by him. He further stated that according to this record, the claimant had to retire on 1st June, 1981, but the claimant got the entry regarding his date of retirement changed from Shri Babu Ram Time Keeper due to which he could not be retired on 1st June, 1981. He further stated that later on this change in the entry

was noticed by another Senior Time Keeper, who made his report, and the claimant was retired on 30th November, 1981. He further stated that the entry regarding the date of retirement could be changed with the permission of General Manager of the respondent Mills. He also stated that the claimant did not produce his army discharge certificate at the time of appointment and also when he was asked to produce the proof regarding his age. Exhibit M-6 is the copy of the entry made in the record of the Mills which has been produced to show that date of retirement of the claimant was changed from 1st June, 1981 to 13th March, 1985. Exhibit M-7, is the copy of the application made by the claimant on 29th August, 1980 mentioning therein that his date of retirement was 14th March, 1985. This document contains a note of the employee of the Mills to the effect that he had also made correction in the register. The management produced the copy of the chargesheet dated 9th/11th December, 1981 served on Shri Babu Ram Sugar Sales Incharge to show cause as to why he had changed the entry regarding date of retirement of the claimant, due to which the claimant could not be retired on 1st June, 1981. This document was not exhibited by my learned predecessor when the evidence was recorded on 22nd February, 1983 and the objection raised by the representative of the claimant was kept open. The arguments of the representative of both the parties have been heard. Since the document in question has relevancy with the present dispute between the parties, consequently, this document has been exhibited as M-8.

8. Shri Faquir Singh claimant has appeared as WW-1 and stated that he was ex-serviceman and that his Military discharge certificate was seen by the management when he joined service as watchman in the respondent mills, copy of which was Exhibit W-1. He further stated that he was discharged from Military service on 14th March, 1947 and his age at that time was mentioned as 22 years. He further stated that the service book was issued by the mills, copies Exhibit W-2 and W-3. He then stated that in 1968, he received a notice to give proof of his age, when he went to the Doctor, who enquired regarding the discharge certificate issued by the Military Authorities. He further stated that the said discharge certificate was shown to the Doctor who gave his report on the said notice after seeing the discharge certificate. He also stated that later on, a list was displayed by the Time Office on the Notice Board showing the date of retirement of

the claimant as 1st June, 1981 when the claimant went to Shri Babu Ram Senior Time Keeper, who corrected the date of retirement after seeing military certificate. He further stated that there after he gave the application copy Exhibit W-4, when he was informed by the Time Office that necessary correction had been made in the record of the mills. He further stated that he was retired on 30th Nov., 1981,—vide letter Exhibit W-5, when he gave the notice Exhibit W-6. He also stated that the dates of retirement of other workers had been corrected in the same manner on seeing Military discharge certificate. He also stated that after Military service he became Sikh and that later on he made an application in the Soldiers Board, Karnal, along with his photo and present address which documents were sent to Secondrabad Headquárters and that his certificate duly corrected was issued by the Headquarters, copy Exhibit W-7. He further stated that his services were terminated illegally and that the contents of the document Exhibit M-5, were not read over to him, when his signatures were obtained by the concerned clerk there on. WW-2 Shri Mohinder Singh employee of the Sugar Mills has deposed that the notice, copy Exhibit M-3, was issued to the claimant on full length sheet. WW-2 Shri Babu Ram, who was previously Senior Time Keeper in the Sugar Mills has deposed that the Doctor had given the certificate regarding age on the notice Exhibit M-3, to the effect that he had seen the Military discharge certificate of the claimant. He further stated that he corrected the date of retirement of the claimant after seeing his Military discharge certificate as 13th March, 1985 in stead of 1st June, 1981. He further stated that he had corrected such dates regarding other workers, namely, Shri Ram Singh Daftari, Shri Dalip Singh, Shri Daya Chand watchman, Shri Daya Chand Peon etc. and that the date of retirement of the claimant was corrected by him on the basis of previous practice prevailing in the Mills. He further stated that in the application copy Exhibit M-7, given by the claimant he had made a report to the effect that he had already made correction in the register and that he sent the application to the office which was not received back by him.

9. A perusal of the above evidence would show that the case of the management is that the age of the claimant was given as 47 years by the Doctor of the Mills in 1968,—vide certificate dated 1st June, 1968 Exhibit M-1, and that this entry was made in the record copy

Exhibit M-4, according to which the claimant had to retire on 1st June, 1981, but WW-3 Shri Babu Ram Sharma, Senior Time Keeper, changed the retirement date of the claimant from 1st June, 1981 to 13th March, 1985,—vide document Exhibit M-4, due to which the claimant could not be retired on 1st June, 1981 but was retired on 30th November, 1981 and that this unauthorised change of entry was brought to the notice of the management by another Senior Time Keeper. The case of the claimant, on the other hand, is that his age was determined by the Doctor on the basis of the Military discharge certificate and that the Doctor had wrongly mentioned the age of the claimant as 47 years on 1st June, 1981 whereas according to Military discharge certificate the claimant was 43 years old on 1st June, 1981 and that Shri Babu Ram Sharma, Senior Time Keeper corrected his date of retirement on seeing the Military Discharge Certificate, according to which he had to retire on 13th March, 1985, but the claimant was retired on 30th November, 1981 in an illegal manner. The question for determination is as to which of the rival contentions is correct. Exhibit W-1 is the copy of the Military Discharge Certificate, which was prepared in the first instance on 13th January, 1947. W-7 is the copy of this certificate which was corrected on 29th May, 1982. This document shows that the Military discharge certificate was prepared on 13th January, 1947 and age of the claimant was given as 22 years at that time. The claimant was however, discharged from Military service on 14th March, 1947. According to this document claimant was aged 22 years on 13th January, 1947. When the claimant was asked to produce proof regarding his age,—vide notice copy Exhibit M-3, issued by the respondent Mills in 1968 on the back of this notice. There is a noting to the effect that the claimant was 22 years old in 1947 and was discharged in 1947. However, the Doctor mentioned the age of the claimant as 47 years and the certificate Exhibit M-1 was issued on that basis. The endorsement made on the back side of the document Exhibit M-3 shows that the Doctor gave his opinion regarding age of the claimant on the basis of the Military Discharge Certificate produced by him because all the relevant entries of that discharge certificate find mentioned in the endorsement made by the Doctor on the back side of the notice Exhibit M-3. The representative of the claimant rightly argued that there was a clerical mistake in the report made by a Doctor because when the claimant was 22 years old in 1947, he was about 43 years

old in 1968, but due to wrong calculation, the age was mentioned by the Doctor as 47 years. The report of the Doctor does not show that he based his opinion regarding the age of the claimant on any other data except Military discharge certificate. Moreover, when the age was mentioned in the Military Discharge Certificate there was no occasion to determine the age of the claimant against by any other method because the age which was accepted by the Military Authorities at the time of first appointment of the claimant in service cannot be changed. Since the claimant was 22 years old on 13th January, 1947, when the discharge certificate was prepared, the date of retirement of the claimant was 12th January, 1985, when he attained the age of 60 years, but the Senior Time Keeper wrongly mentioned the date of retirement as 13th March, 1985 because the date has to be taken into consideration with effect from 13th January, 1947, on which date the discharge certificate was prepared and signed by the claimant as well in which his age was mentioned as 22 years. As such this period cannot be taken into consideration with effect from 14th March, 1947 on which date the claimant was actually discharge from Military service.

10. It was argued by the representative of the management that the Military Discharge Certificate was not shown to the Doctor and as such the age given by the Doctor was not based on this Military discharge certificate. Argument is without any force because on the back portion of the notice Exhibit M-3. It is clearly mentioned that the entries were made by the Doctor after seeing the Military Discharge Certificate as mentioned above. The management has not produced the concerned Doctor or the detailed report to show that the Doctor gave his opinion on some other data.

11. It was then argued that Military Discharge Certificate did not pertain to the claimant because in that document he was described as Faqir Chand S/o Sohial Chand. The claimant has deposed that after his discharge from Military he became a Sikh. His photo in the document Exhibit M-4, was accepted by the management showing him as a Sikh Gentleman. Moreover his Military discharge certificate was corrected by the Military Authorities on 29th May, 1982 giving his present address and attesting his photo. The photo given in this document and the one given in the document Exhibit M-4 relate to the same person. Consequently, there remains no dispute regarding identity of the claimant because he changed his name, when he

became a Sikh after discharge from Military service.

12. It was then argued that Shri Babu Ram Sharma was not competent to change the date of retirement of the claimant and as such the entry made by him was illegal and that Shri Babu Ram Sharma had been chargesheeted by the respondent Mills for this irregularity. The chargesheet has been exhibited as M-8, as already mentioned above. It is for the management to decide the fate of Shri Babu Ram Sharma for not obtaining the orders of the competent authority to change the date of retirement. Shri Babu Ram Sharma however deposed that previously he had been changing such entries and he had named several workers in this respect as mentioned above. It is for the management to consider his explanation in the departmental proceedings and no finding can be given in these proceedings. The fact, however, remains that the age of the claimant was not correctly given by the Doctor due to wrong calculation of his age after seeing the Military discharge certificate.

13. It may be mentioned that the management placed reliance on the ruling reported as *Jiwan Kishore and Delhi Transport Corporation and another, 1981-ILLJ page 271*. This ruling is distinguishable on facts because in that case, there was a discrepancy in the record inasmuch as in one document, the year of birth was mentioned as 1917 while in other document as 1927 and it was held that since there was wide discrepancy in the record, medical opinion can be accepted. As already mentioned above in the Military discharge certificate, the age was mentioned as 22 years in 1947, but the error crept in due to wrong calculation of the age by the Doctor after seeing Military discharge certificate.

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14. In view of the above discussion, it is held that the date of retirement of the claimant was 12th January, 1985 and as such the impugned order retiring him from service from 30th November, 1981 cannot be upheld. The date of retirement of the claimant as 12th January, 1985 has also passed and consequently, the question of reinstatement of the claimant does not arise. Keeping in view the circumstance that the claimant slept over the matter from 1968 to 1981 by verifying the age given by the Doctor in 1968 and the circumstance that the management acted upon the report given by the Doctor, which was based on mis-calculation, it is a fit case in which the claimant should be given compensation for the period 1st December, 1981 to 12th January, 1985 at the rate of $\frac{1}{4}$ (one fourth) of the wages, which the claimant was drawing when he was retired on 30th November, 1981. The award is passed accordingly.

Dated : 3rd February, 1986

R. N. BATRA

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 80, dated 3rd February, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

KULWANT SINGH,
Secretary to Government Haryana,
Labour and Employment Department.

अम विभाग

आदेश

दिनांक 5 मई, 1986

सं. श्रो. वि०/सोनीपत/26-86/15346.—चूंकि हरियाणा के राज्यपाल की रायें हैं कि मैं शिव भट्टा कम्पनी, जहाराड़ा जिला सोनीपत के श्रमिक श्री श्याम सिंह तथा उसके प्रवन्धकों के बीच इसमें इसके बाद लिखित मामले में कोई अधिकारिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद नो अधिनियम हेतु निर्दिष्ट करना वांछनीय समझते हैं;

इसलिए, अब, अधिकारिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुये हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं. 9641-1-श्रम-78/32573, दिनांक 6

नवम्बर, 1970 के साथ पटित सरकारी अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, रोहतक, को विवादग्रस्त या उससे सुसंगत या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जो कि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है:—

क्या श्री इश्याम सिंह, पुत्र श्री तारा चन्द की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. ओ.वि.ओ/अम्बाला/ 133-85/15353.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं को० को० एण्ड कम्पनी 212, इण्डस्ट्रीयल ऐरिया, पंचकुला (अम्बाला), के श्रमिक श्री सतीन्द्र कुमार तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रीदोगिक विवाद है;

इसलिए, अब, श्रीदोगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 3(44) 84-3-श्रम, दिनांक 18 अप्रैल, 1985, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, अम्बाला, को विवादग्रस्त या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं, जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है, या विवाद से सुसंगत अथवा सम्बन्धित मामला है:—

क्या श्री सतीन्द्र कुमार पुत्र श्री विलास राम की सेवाओं का समापन किया गया है? या उसने स्वयं त्याग-पत्र देकर नौकरी छोड़ी है? इस बिन्दु पर निर्णय के फलस्वरूप वह किस राहत का हकदार है?

सं. ओ.वि.ओ/15359.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं (1) युनाईटेड इन्टर प्राइसिस जैसको कालीनी जगाधरी, (2) बलदेव मैटल इण्डस्ट्रीयल बर्क्स, जगाधरी के श्रमिक श्री फकीर चन्द तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रीदोगिक विवाद है;

इसलिए, अब, श्रीदोगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 3(44) 84-3-श्रम, दिनांक 18 अप्रैल, 1985 द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, अम्बाला, को विवादग्रस्त या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है:—

क्या श्री फकीर चन्द पुत्र श्री अनंत राम की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. ओ.वि.एफ.डी./15-86/15366.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं लेख इण्डस्ट्रीशैल सर्विस (रजि०), प्लाट नं० 311, सेक्टर-24, फरीदाबाद, के श्रमिक श्री नवल सिंह तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रीदोगिक विवाद है;

* और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना वांछनीय समझते हैं;

इसलिए, अब, श्रीदोगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-श्रम-68/15254, दिनांक 20 जून, 1978, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-श्रम-57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे संबन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा संबन्धित मामला है:—

क्या श्री नवल सिंह, पुत्र श्री सुख राम की सेवा समाप्त की गई है? या उसने स्वयं गैर हाजिर-होकर नौकरी से पुनर्ग्रहण अधिकार (लीयन) खोया है? इस बिन्दु पर निर्णय के फलस्वरूप वह किस राहत का हकदार है?

जे. पी. रतन,

उप सचिव, हरियाणा सरकार,
श्रम विभाग।